

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

MICHAEL S. TOMASZEWSKI,

Case No. 20-10203-CLB

Debtor.

**STIPULATION AND ORDER CONCERNING NON-DISCHARGEABLE
DEBT OF ROBERT AND ELIZABETH FRYER, LAWRENCE AND
PATRICIA SIMMONS AND ARLENE VANDERWARKER**

WHEREAS, Debtor Michael S. Tomaszewski (the "Debtor"), filed a voluntary petition pursuant to Title 11 U.S.C., seeking Chapter 11 Bankruptcy Relief on February 5, 2020.

WHEREAS, an order was entered converting the case to a Chapter 7 case on March 16, 2021.

WHEREAS, the Debtor owned, operated and served as the funeral director of Michael S. Tomaszewski Funeral and Cremation Chapel, LLC located in Batavia, New York. The Debtor was licensed and registered under New York law. The funeral home is no longer operating.

WHEREAS, under Section 453 of New York's General Business Law, a funeral home and a funeral director accepting a pre-need deposit is required to place the deposit into a segregated interest-bearing account bearing the name of the depositor client.

WHEREAS, the funeral home and funeral director (in this case the Debtor) was required to provide notice of the establishment of that account and periodic notice of the interest earned on the same to the depositor or depositors whose pre-need deposits were accepted.

WHEREAS, claimant Robert Fryer filed a Proof of Claim for a pre-need deposit in the amount of \$5,300.00 (Proof of Claim No. 30).

WHEREAS, claimant Elizabeth Fryer filed a Proof of Claim for a pre-need deposit in the amount of \$5,300.00 (Proof of Claim No. 31).

WHEREAS, claimant Lawrence J. Simmons filed a Proof of Claim for a pre-need deposit in the amount of \$15,500.00 (Proof of Claim No. 25).

WHEREAS, claimant Patricia A. Simmons filed a Proof of Claim for a pre-need deposit in the amount of \$15,500.00 (Proof of Claim No. 26).

WHEREAS, claimant Arlene Vanderwarker filed a Proof of Claim for a pre-need deposit in the amount of \$8,750.00 (Proof of Claim No. 24).

WHEREAS, the first \$3,025.00 of each of the respective unrefunded consumer deposit claims is entitled to priority status under Section 507(a)(7) of the Bankruptcy Code.

WHEREAS, each of the claimants above asserts that the debt owed to each of them is non-dischargeable under Section 523(a)(2) of the Bankruptcy Code.

WHEREAS, each of the claimants above asserts that the debt owed to each of them is non-dischargeable under Section 523(a)(4) of the Bankruptcy Code.

WHEREAS, each of the claimants above asserts that the debt owed to each of them is non-dischargeable under Section 523(a)(6) of the Bankruptcy Code.


WHEREAS, the Debtor is subject to a pending criminal proceeding.

NOW, THEREFORE, Michael S. Tomaszewski and Andreozzi Bluestein LLP, on behalf of each claimant herein, by affixing their signatures to this Stipulation and Order, agrees that the Court may enter an Order directing that the indebtedness owed to each claimant is non-dischargeable in this matter, pursuant to Sections 523(a)(2), 523(a)(4) and 523(a)(6) of the Bankruptcy Code.

AGREED:

DATED: Rochester, New York
April 20, 2021

TREVETT CRISTO


By: 
David H. Ealy, Esq.
Attorneys for the Debtor

DATED: Batavia, New York
April 20, 2021

By: 
Michael S. Tomaszewski
Debtor

DATED: Clarence, New York
April 21, 2021

ANDREOZZI BLUESTEIN LLP

By: 
Ruth R. Wiseman, Esq.
Attorneys for Claimants
Robert and Elizabeth Fryer
Lawrence and Patricia Simmons
Arlene Vanderwarker
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BASED UPON THE STIPULATION ABOVE, IT IS SO-ORDERED,

1. That the debt owed to each of the claimants identified herein is non-dischargeable pursuant to Sections 523(a)(2), 523(a)(4) and 523(a)(6) of the Bankruptcy Code;

2. That the indebtedness of \$5,300.00 owed to claimant Robert Fryer is a pre-petition non-dischargeable debt in the amount of \$5,300.00;


3. That the indebtedness of \$5,300.00 owed to claimant Elizabeth Fryer is a pre-petition non-dischargeable debt in the amount of \$5,300.00;

4. That the indebtedness of \$15,500.00 owed to claimant Lawrence J. Simmons is a pre-petition non-dischargeable debt in the amount of \$15,500.00;

5. That the indebtedness of \$15,500.00 owed to claimant Patricia A. Simmons is a pre-petition non-dischargeable debt in the amount of \$15,500.00;

6. That the indebtedness of \$8,750.00 owed to claimant Arlene Vanderwarker is a pre-petition non-dischargeable debt in the amount of \$8,750.00.

Dated: Buffalo, New York
April 22, 2021



Hon. Carl L. Bucki
Chief United States Bankruptcy Judge

